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VIA COURIER

August 24, 2007

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek
236 Massachusetts Avenue, N.E., Suite 110
Washington, D.C. 20002

FILED/ACCEPTED

AUG 24 2007

Federal Communications Commission
Office of the Secretary

Re: Appeal of USAC Decisions

CC Docket No. 02-6; CC Docket No. 96-45

Request for Review

Request for Waiver

Applicant Name: Morrow County School Dist 1
Billed Entity Name: Morrow County School Dist 1
Billed Entity Number: 145127
471 Application Numbers: 254806 and 247557
Funding Request Numbers: 633076, 644208, 627104, 628103,
628321, 628701, 628804, and 629069

Dear Secretary Dortch:

This firm represents the Morrow County School District (Oregon). On behalf of our client, we hereby appeal to the Federal Communications Commission ("FCC") the June 28, 2007 decisions of the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC"). We also reserve our client's rights to request a waiver of relevant policy, rules and/or deadlines. As reflected in the two (2) attached USAC documents entitled *Administrator's Decision on Appeal*, USAC denied our client's appeal of USAC's Funding Year 2001 Commitment Adjustment Letters for the Funding Request Numbers ("FRNs") cited in those letters. See Ex. A (SLD's Decision re Application No. 247557); Ex. B (SLD's Decision re Application No. 254806).

As we were only recently engaged to represent our client, we will supplement this appeal with a full discussion of the Morrow County School District's positions and supporting arguments as soon as possible.

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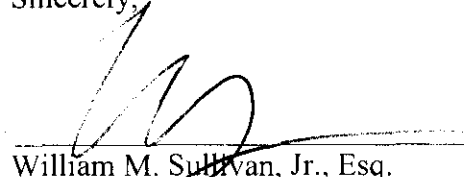
Marlene H. Dortch, Secretary

August 24, 2007

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Thank you for your attention to this matter. Should you have any questions, please contact Sarah M. Hall, Esq. at (202) 282-5862, or by email at smhall@winston.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Sullivan, Jr.", is written over a horizontal line.

William M. Sullivan, Jr., Esq.

WINSTON & STRAWN LLP

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Enclosures

Exhibit A



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal - Funding Year 2001-2002

June 28, 2007

Mark Burrows
Morrow County School District
P. O. Box 368
Lexington, OR 97839

Re: Applicant Name: Morrow County School Dist 1
 Billed Entity Number: 145127
 471 Application Number: 254806
 Funding Request Number(s): 633073 and 633208
 Your Correspondence Dated: April 25, 2007

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of USAC's Funding Year 2001 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of USAC's decision. The date of this letter begins the 60 day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number: 633073 and 633208
Decision on Appeal: **Denied**
Explanation:

- In its Funding Year 2001 FCC Form 471, the applicant made 2 funding requests supported by Form 470 application number 832810000329624. One of the requests sought discounts on services to be provided by Arbogast Business Services and Computers. In Item 6 of the Form 470, Morrow County School District listed Nate Arbogast as a contact person. Mr. Arbogast is an employee of Arbogast Business Services and Computers. In Mastermind Internet Services, Inc., the Commission held that an applicant violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process. Such

surrender occurs when an applicant names a representative of a participating service provider as contact person on the Form 470. Thus, the Commission concluded that "a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the Form 470 also participates in the competitive bidding process as a bidder." In such a case, the Form 470 is invalid and any funding request based on that Form 470 must be denied. Additionally, USAC guidelines, (<http://www.sl.universalservice.org/vendor/manual/chapter5.doc>), state that "the presence of a representative or employee of a Service Provider as the contact on the Form 470, or any contact information associated with a service provider on the Form 470, renders that Form 470 invalid." On October 11, 2001, the applicant requested a SPIN change for the request that sought discounts on services to be provided by Arbogast Business Services and Computers, which was granted on January 29, 2002. However, any funding request that is in violation of the program rules affects other funding requests or an entire application (as in this case) and may not have its SPIN changed to avoid the program violation. Because all of the funding requests in this Morrow County School District Form 471 relied on this invalid Form 470, USAC correctly rescinded funding for the entire application.

- USAC has determined that a service provider who participated in the competitive bidding process as a bidder was listed as a contact person on your FCC Form 470; therefore, assisting in the selection of your vendors for the services sought. The service provider's involvement with the preparation and submission of the Form 470 violates the competitive bidding requirements for the FRN(s) listed above. Since you violated the FCC competitive bidding rules, USAC rescinded your funding request and sought recovery of any funds disbursed. In your appeal, you have not shown that USAC's determination was incorrect. Consequently, USAC denies your appeal.
- FCC rules require that, except under limited circumstances, an eligible school, library or consortium that includes an eligible school or library shall seek competitive bids for all services eligible for support. See 47 C.F.R. sec. 54.504(a). An applicant violates the FCC's competitive bidding requirements when it surrenders control of the bidding process to a service provider who participated in the competitive bidding process as a bidder. See Request for Review by Mastermind Internet Services, Inc, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, Order, 16 FCC Rcd 4028, FCC 00-167, para. 9-10 (rel. May 23, 2000). Pursuant to FCC guidance, this principle applies to any service provider contact information on an FCC Form 470 including address, telephone, fax numbers, and e-mail address. See Request for Review of the Decision of the Universal Service Administrator by Consorcio de Escuelas y Bibliotecas de Puerto Rico, Federal-State Joint Board on Universal Service,

Changes to the Board of Directors of the National Exchange Carrier Association, Inc., File No. SLD-228216, CC Docket Nos. 96-45 and 97-21, Order, 17 FCC Rcd 13628, DA 02-1676 para. 11 (rel. July 15, 2002). FCC rules require that FCC Forms 470 be signed by a person authorized to order telecommunications and other supported services for the eligible entities and certify under oath to all the required certifications. See 47 C.F.R. 54.504(b)(2). Conflict of interest principles that apply in competitive bidding situations include preventing the existence of conflicting roles that could bias a contractor's judgment and preventing an unfair competitive advantage. See 48 C.F.R. sec. 9.505(a), (b). The FCC's Fifth Report and Order requires recovery of all funds disbursed for any funding request in, which the competitive bidding rules have been violated. See Schools and Libraries Universal Service Support Mechanism, CC Docket No. 02-6, Fifth Report and Order and Order, 19 FCC Rcd 15815-15816, FCC 04-190 para. 21 (rel. Aug. 13, 2004).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either USAC or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD section of the USAC web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

Schools & Libraries – Competitive Bidding Process

The competitive bidding process begins when an applicant posts the Form 470 to the USAC website and/or issues an RFP. The applicant must then wait 28 days after the Form 470 is posted or an RFP is issued (whichever is later) before selecting a service provider, ordering services and/or executing a contract.

Conduct an open, fair competitive bidding process

- "Open" means that there are no secrets in the process and that all bidders have equal access to the same information.
- "Fair" means that all bidders are treated the same and that no bidder has privileged knowledge over the contents of the Request for Proposal (RFP) or the Form 470.

Service provider involvement in the competitive bidding process

- Service provider involvement in the preparation or certification of the Form 470 or the vendor selection can taint the competitive bidding process and result in denials.
- Applicants cannot turn over their responsibility for ensuring a fair and open competitive bidding process to a service provider or a consultant acting on behalf of a service provider. Only applicants or authorized representatives can prepare, sign and submit (i.e., post to the website or file on paper) the Form 470 and certification.
- Listing a service provider representative as the Form 470 contact person and allowing the same service provider to participate in the competitive bidding process is a violation of FCC rules and will result in denial of funding.
- Service providers who bid on services must not participate in the evaluation process.

Select the winning bid

- Price of the eligible products and services must be the primary factor and given more weight than any other category when evaluating bids. It does not have to be the sole factor. Examples of relevant factors include: prior experience, personnel qualifications, management capability, environmental objectives, and the cost of ineligible goods and services.
- The selected bid must be cost-effective in comparison to prices available commercially. If you receive only one bid, it is not necessarily cost-effective.

Retain all documents for a period of five years from the last date of service

- This includes:
 - Request For Proposal (RFP), with evidence of publication date
 - Bid evaluation matrix, criteria and weighting
 - Bid evaluation worksheets
 - All written correspondence with the service providers
 - All bids submitted, both winning and losing
 - Other documentation related to service provider selection

For additional information, please use the USAC resources listed below:

28 Day Waiting Period:	http://www.usac.org/sl/applicants/step04/28-day-waiting-period.aspx
Competitive Process:	http://www.usac.org/sl/applicants/step03/
Open & Fair Bidding:	http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx
Selecting Service Provider:	http://www.usac.org/sl/applicants/step04/

Exhibit B



100 South Jefferson Road, P.O. Box 902, Whippany, New Jersey 07981
Visit us online at: www.usac.org/sl/

violates the Commission's competitive bidding requirements when it surrenders control of the bidding process to a service provider that participates in that bidding process. Such surrender occurs when an applicant names a representative of a participating service provider as contact person on the Form 470. Thus, the Commission concluded that "a violation of the Commission's competitive bidding requirements has occurred where a service provider that is listed as the contact person on the Form 470 also participates in the competitive bidding process as a bidder." In such a case, the Form 470 is invalid and any funding request based on that Form 470 must be denied. Additionally, USAC guidelines, (<http://www.sl.universalservice.org/vendor/manual/chapter5.doc>), state that "the presence of a representative or employee of a Service Provider as the contact on the Form 470, or any contact information associated with a service provider on the Form 470, renders that Form 470 invalid." On October 11, 2001, the applicant requested a SPIN change for the request that sought discounts on services to be provided by Arbogast Business Services and Computers, which was granted on January 29, 2002. However, any funding request that is in violation of the program rules affects other funding requests or an entire application (as in this case) and may not have its SPIN changed to avoid the program violation. Because all of the funding requests in this Morrow County School District Form 471 relied on this invalid Form 470, USAC correctly rescinded funding for the entire application.

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